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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001424-MR

DAVID WARSOW AND
MARGARET WARSOW — APPELLANTS

v.

APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY STARK, JUDGE
ACTION NO. 15-CI-00097

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GOODWINE, MAZE, AND SPALDING, JUDGES.

SPALDING, JUDGE: This appeal stems from the entry of summary judgment in an action seeking a declaration that an insurance policy provision limiting coverage for bodily injury from a single accident to $50,000.00 per person is void as against public policy. We affirm.

Appellant, David Warsow, was riding a motorcycle when his left leg collided with a 2 x 4 extending from the side of a trailer full of lumber being towed behind a truck owned by Scott Yokley and being driven by his son, Keith Yokley. According to the complaint, the truck was insured under a policy issued by appellee, State Farm Mutual Automobile Insurance Company, to Patricia Yokley. The complaint also alleged that Scott Yokley was negligent in loading the lumber and Keith Yokley was negligent in operating the truck. Although appellants, David Warsow and his wife Margaret, were able to reach an agreement with the Yokleys as to liability and settle their claims for the State Farm policy limits, they reserved the right to file a declaration of rights action to determine exactly what the policy limits would be.

In an amended complaint filed in that action, appellants argued that they were entitled to the policy limit of $50,000.00 for Scott Yokley's liability in negligently loading or failing to secure the lumber in the trailer and $50,000.00 for Keith Yokley's liability in his negligent operation of the truck. Hence, the coverage limit should be $100,000.00. State Farm moved for summary judgment on the basis of language in the policy limiting bodily injury coverage for "each person" to $50,000.00 for the accident. The Graves Circuit Court agreed and granted State Farm's motion. This appeal followed the denial of appellants' motion to alter or amend that judgment.

The policy afforded bodily injury liability coverage of $50,000.00 for "each person" or $100,000.00 for "each accident", and it explained that monetary coverage limit as follows:

> The Liability Coverage limits for *bodily injury* are shown on the Declarations Page under "Liability Coverage – Bodily Injury Limits – Each Person, Each Accident."
>
> The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *person* injured in any one accident, including all damages sustained by other *persons* as a result of that *bodily injury*. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person," for all damages resulting from *bodily injury* to two or more *persons* injured in the same accident.
>
> . . . .
>
> These Liability Coverage limits are the most we will pay regardless of the number of:
> 1. *insureds*;
> 2. claims made;
> 3. vehicles insured; or
> 4. vehicles involved in the accident.

As an initial and conceivably most important matter, appellants concede that, as written, the State Farm Policy provides $50,000.00 in liability coverage. Thus, there is no issue of contract interpretation. Instead, appellants assert that because in this case two insureds committed separate torts, as a matter of public policy each insured should be covered up to the policy limit of $50,000.00 for a total limit of $100,000.00 on the policy for this incident.

Appellants insist that State Farm's interpretation of the policy language cannot be applied in a way which consistently complies with the Motor Vehicle Reparations Act (MVRA) codified in KRS[1] 304.39-080(5):

> Except for entities described in subsections (3) and (4) of this section, every owner or operator of a motor vehicle registered in this Commonwealth or operated in this Commonwealth with an owner's permission shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle.

Acknowledging the lack of specific caselaw supporting the contention that each separate act of negligence triggers entitlement to separate payments of the policy limits, appellants offer hypothetical situations demonstrating the alleged injustice of State Farm's policy provision. Appellants cite a situation in which two separate motorists own vehicles insured by State Farm with the minimum liability limits of $25,000.00. Appellants suggest that State Farm's exclusion, when taken to its logical extreme, would violate the MVRA in a collision between those two vehicles because the "effective" policy limits would be less than the limits shown on the applicable declarations page. In other words, in any collision involving two

[1] Kentucky Revised Statute.

or more State Farm policy holders with minimum coverage, no person could recover more than $25,000.00 for bodily injuries, despite each vehicle being insured for that amount. Appellants argue that State Farm's acceptance of premiums under a policy which covered a pickup truck and a trailer as separate items cannot be distinguished from the situation in which two unrelated State Farm insureds cause bodily injury to a third person. Appellants insist that the policy provision in question is unfair not only to its own insureds, but also to innocent persons injured by the concurrent negligence of unrelated State Farm insureds.

However, in the case before us, it is clear that there was but one vehicle with one insurance policy covering it. It is undisputed that both Scott Yokley and Keith Yokley were insureds at the time of the accident in regard to the operation of the motor vehicle at issue herein. Scott Yokley was an insured because he was Patricia Yokley's spouse and resided with her at the time of the accident. Keith Yokley was an insured because of his status as Scott Yokley's son who was residing with Scott and Patricia when the accident occurred. There is some dispute as to appellants' allegation that State Farm accepted separate premiums for the pickup truck and the trailer. State Farm notes that although its policy insured both the truck and the trailer, only the truck was expressly insured under the policy. The trailer was insured only by class and no part of the premium

was attributable to insuring the trailer. Nevertheless, what is clear is that at least $50,000.00 is available to appellants by reason of this accident.

In our view, the MVRA requires that the Yokleys maintain minimum liability coverage on the vehicle–the pickup truck. It does not require that Scott Yokley purchase insurance for his actions in loading the trailer. However, even accepting appellants' premise that Scott's negligent loading of the trailer alone would trigger liability under the MVRA, the fact remains that it is coverage for the *vehicle* which the MVRA requires regardless of what actions bring the policy limits into play. Regardless of whether the actions of Scott and Keith combined to cause Mr. Warsow's injuries, the claims asserted fall under the single policy of insurance covering the pickup truck they were driving. Thus, we cannot construe the provision in question as violating the public policy mandate of the MVRA in the circumstances that exist in this matter.

We also find appellants' reliance upon *Nationwide Mutual Insurance Company v. Hatfield*, 122 S.W.3d 36 (Ky. 2003); *Ohio Casualty Insurance Company v. Stanfield*, 581 S.W.2d 555 (Ky. 1979); and *Countryway Insurance Company v. United Financial Casualty Insurance Company*, 496 S.W.3d 424 (Ky. 2016), unpersuasive. Both *Hatfield*, concerning underinsurance provisions, and *Stanfield*, concerning stacking of uninsured motorists' coverage, are cases in which the Supreme Court of Kentucky voided insurance policy provisions under public

policy considerations. In *Hatfield*, the Court held that any attempt to limit or exclude the extension of underinsured motorists' coverage is "clearly contrary to the expressed intent of the underinsured motorist statute and is void and unenforceable." *Hatfield*, 122 S.W.3d at 42. *Stanfield* reiterates the principle of reasonable expectations holding that a policy holder paying separate premiums for the provision of uninsured motorists' coverage supports that insured's right to stack coverage as "consistent with the public policy of our statute requiring the provision of uninsured motorist coverage in each automobile liability policy." *Stanfield*, 581 S.W.2d at 559. Thus, in each case, the Supreme Court voided policy provisions in favor of affording a benefit directly to the person paying for the insurance coverage. In the case before us, however, claimants unrelated to the policy are seeking to void a policy provision. We thus view *Hatfield* and *Stanfield* as providing no precedential value and limited, if any, insight in resolving the issue here.

In *Countryway*, the Supreme Court addressed the question of whether an insurance policy covering a vehicle or the policy of a passenger provided coverage to the passenger and concluded that the MVRA evinced a "legislative intent to the effect that in instances where both the vehicle owner and a non-owner passenger are separately insured with UM coverage, the vehicle owner's coverage

shall be primary." *Countryway*, 496 S.W.3d at 435. This case has no bearing on the issue at hand.

We do find instructive, however, the analysis of the Supreme Court in *Daley v. Reed*, 87 S.W.3d 247 (Ky. 2002), concerning the parameters of "each person" provisions:

> We note at the outset that virtually every jurisdiction that has addressed this issue has concluded that loss of consortium is not a separate "bodily injury" but is derivative of the injured party's bodily injury claim; and, thus, a claim for loss of parental consortium falls within the "each person" limit of the policy's coverage.

Id. at 248-49. Similarly, in our view, the negligence of both Scott and Keith falls within the limitation on damages "resulting from *bodily injury* to any one *person* injured in any *one accident*." This view comports with the *Daley* Court's conclusion that "the existence of a cause of action for damages does not mean that those damages are *ipso facto* recoverable from a particular policy of insurance." *Id*. at 249. What that conclusion means in the context of this case is that just because a claim can be made against Scott for allegedly misloading the trailer does not necessarily mean insurance has to cover it. Under the undisputed facts, there was coverage for the truck involved in the single accident; both Scott and Keith were insureds under the policy; and the policy limited coverage for bodily injury to $50,000.00 per person per accident. Kentucky law does not require Scott to maintain insurance for the act of loading a trailer with 2 x 4 lumber. Thus, the

policy provision capping damage recovery at $50,000.00 for Mr. Warsow's injury does not violate Kentucky public policy.

Finally, in a footnote in its brief, State Farm argues that this appeal is "so totally lacking in merit that it is frivolous under CR[2] 73.02(4) and justifies the imposition of sanctions against Appellants." In order for the CR 73.02(4) sanction to be applicable, this Court must find that an "appeal is totally lacking in merit in that no reasonable attorney could assert such an argument, bad faith may be inferred, and the appeal is frivolous." *Leasor v. Redmon*, 734 S.W.2d 462, 464 (Ky. 1987). Here, appellants ask this Court to review the public policy implications of an interpretation of an insurance contract. There is a significant history in this Commonwealth of instances in which appellate courts elected to rewrite insurance policies based upon public policy concerns. No party was able to cite to this Court a case directly dispositive of the question posed by appellants. Hence, the Court does not find appellants' assertion of their constitutional right to appeal the circuit court's decision to be so meritless an exercise that no reasonable attorney would undertake it. Therefore, sanctions are not warranted.

In sum, the judgment of the Graves Circuit Court is affirmed and the request for sanctions for a frivolous appeal is denied.

[2] Kentucky Rule of Civil Procedure.

ALL CONCUR.

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